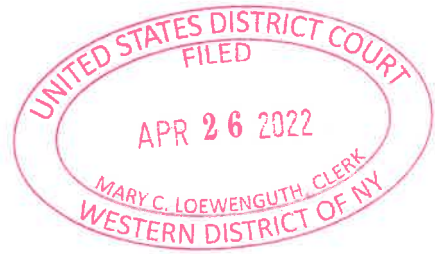


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



KENNETH ORTIZ

Plaintiff,

v.

ORLEANS COUNTY, et al.,

Defendants.

20-CV-1555 (JLS) (MJR)

DECISION AND ORDER

On October 22, 2020, Plaintiff Kenneth Ortiz commenced this action asserting that Defendants violated his rights under the Constitution and New York law while Ortiz was in the custody at the Orleans County jail in 2019. Dkt. 1. On March 8, 2021, this Court referred this case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 13. On May 4, 2021, Defendants filed a motion to dismiss Ortiz's amended complaint (Dkt. 14) as to Ortiz's second (negligent hiring and training), third (*Monell*), fourth (due process), and seventh (statutory negligence) causes of action. Dkt. 18.

Presently before the Court is Judge Roemer's March 16, 2022 Report & Recommendation ("R&R") recommending that the partial motion to dismiss be granted in part and denied in part. Dkt. 30. Specifically, Judge Roemer recommended Defendants' motion to dismiss be granted as to Ortiz's second, third, and seventh causes of action. *See id.* at 12, 26, 28-29. As for the fourth cause of

action (Section 1983 procedural due process claim), Judge Roemer recommended that Ortiz's claims against Defendants Caufield, Mignano, Christopher, and Schening in their individual capacities be allowed to proceed; and that Ortiz's claims against Defendants Bower and Wilson in their individual capacities be dismissed.¹ *Id.* at 20-23. The parties did not object to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

This Court has reviewed Judge Roemer's R&R and the relevant record. Based on that review and the absence of any objections, the Court accepts and adopts Judge Roemer's recommendation to grant the motion to dismiss in part and to deny the motion to dismiss in part. Accordingly, the motion to dismiss is granted as to Ortiz's second, third, and seventh causes of action. The motion to dismiss is

¹ As for the Section 1983 procedural due process claims against Defendants in their official capacities, Judge Roemer agreed with Defendants that such claims are treated as claims against the entity itself, that is, as *Monell* claims. *See* Dkt. 30, at 23 n.8; *see also* Dkt. 18-1, at 17. This Court agrees—and accordingly, Judge Roemer's recommendation to grant the motion to dismiss as to the *Monell* claims (third cause of action) serves as a recommendation to dismiss the Section 1983 claims against individual Defendants in their official capacities as well.

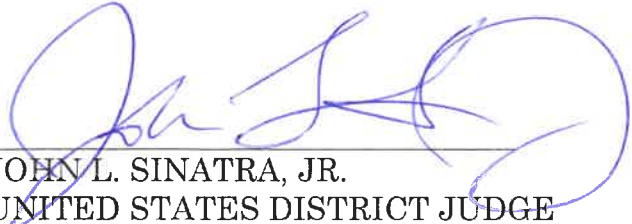
also granted as to Ortiz's Section 1983 claims against Defendants Bower and Wilson in their individual capacities. The motion to dismiss is otherwise denied as to the fourth cause of action: Ortiz's Section 1983 claims against Defendants Caufield, Mignano, Christopher, and Schening in their individual capacities may proceed.

CONCLUSION

For the reasons stated above and in the R&R, Defendants' motion to dismiss (Dkt. 18) is GRANTED as follows: Ortiz's second, third, and seventh causes of action are DISMISSED. The motion to dismiss is also GRANTED as to Ortiz's Section 1983 procedural due process claims against Defendants Bower and Wilson in their individual capacities. The motion to dismiss is DENIED as to the Section 1983 procedural due process claims against Defendants Caufield, Mignano, Christopher, and Schening in their individual capacities. The case is referred back to Judge Roemer for further proceedings consistent with the referral order of March 8, 2021, Dkt. 13.

SO ORDERED.

Dated: April 26, 2022
Buffalo, New York


JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE